

S.B. CIVIL MISC. APPEAL NO.1826/2007.

Smt. Hirki & Anr. Vs. National Insurance Co. & Anr.

Date of Order :: 25th July 2007.**HON'BLE MR. JUSTICE DINESH MAHESHWARI**

Mr. N.S. Rajpurohit, for the appellants.

Mr. T.R.S. Sodha, for the respondent No.1.

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While deciding the application for compensation made by the mother and brother of the vehicular accident victim Prithvi Raj, about 19 years of age, the Tribunal has held the brother of the victim (the appellant No.2) disentitled for any compensation being not the legal representative of the deceased in the presence of his mother (the appellant No.1); and has assessed the loss for the mother-claimant while putting an estimate on her age at about 55 years. The Tribunal has noticed the assertion of the claimants that the deceased was working as cook on a Dhaba earning Rs.3,000-3,500/- per month; and in the circumstances of the case has taken his income at Rs.3,000/- per month; and after deducting one-third wherefrom and with application of multiplier of 5 on the monthly dependency of Rs.2,000/-, has assessed pecuniary loss for the mother-claimant at Rs.1,20,000/- (2000 x 12 x 5). The Tribunal has further allowed Rs.5,000/- towards loss of love and affection and Rs.2,000/- towards funeral expenses and has, therefore, awarded compensation in the sum of Rs.1,27,000/- to the appellant No.1, mother of the deceased; and has allowed interest @ 6% per annum from the date of

filing of the claim application on the remaining amount due after adjustment of the amount received under No Fault Liability. The claimants seek enhancement in this appeal.

Learned counsel for the appellants has urged that the Tribunal has been in error in assessing pecuniary loss with application of multiplier of 5 only though the deceased was about 19 years of age. Learned counsel submitted, while relying on a Division Bench decision of the Hon'ble Calcutta High Court in the case of National Insurance Co. Ltd. Vs. Tara Sundari Devi & Ors. : 2007 ACJ 1441, that in accordance with Second Schedule to the Motor Vehicles Act, 1988 ('the Act'), it is the age of the victim that ought to be taken into consideration for the choice of appropriate multiplier; and thus, in this case multiplier of 16 minimum ought to have been applied.

The decision in National Insurance Co. Ltd. Vs. Tara Sundari Devi (supra) is of no assistance to the appellants, firstly for the said case being related specifically to an application for compensation made under Section 163-A of the Act whereas the claim for compensation has been made in the present case under Section 166 of the Act; and secondly, for it remains a settled proposition of law with consistent decisions of the Hon'ble Supreme Court that choice of multiplier depends on the age of the victim or that of the claimants, whichever be the higher. For ready reference, the

principle of multiplier method of assessment of loss as explained by the Hon'ble Supreme Court in the case of U.P State Road Transport Corporation Vs. Krishna Bala & Ors. : 2006 ACJ 2114 could appositely be reproduced thus:

“8. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.”

(emphasis supplied)

Therefore, the contention of learned counsel for the appellants that multiplier ought to have been applied only with reference to the age of the victim must fail. It may be pointed out that as per Second Schedule, even if the age of the mother of the victim was taken above 55 years, the multiplier of 8 could have been considered appropriate but the Tribunal has applied a multiplier of 5 only; however, when viewed in the context of other surrounding facts and circumstances, this Court finds that the ultimate awarded amount is not on the lower side.

The deceased was 19 years of age and was an unmarried person. The relevant factor that he was likely to get married in future and thereby a larger part of his income was likely to get diverted to his own family could not have been ignored. Therefore, taking of entire of two-third of the estimated income of the deceased towards loss of contribution for the mother cannot be considered proper. In the overall circumstances of the case, not more than one-half of the estimated income of deceased could have been taken towards loss of contribution for the claimant-mother. Then, the dependency factor for the mother would be further on the lower side for existence of her other son, the claimant No.2. In this view of the matter, even when application of multiplier of 5 appears to be wee bit on the lower side, yet the ultimate amount of loss assessed by the Tribunal cannot be said to be insufficient particularly when the Tribunal has adopted the multiplicand much on the higher side at Rs.24,000/- per annum.

In the ultimate analysis, the award of compensation as made by the Tribunal in this case in the sum of Rs.1,27,000/- though moderate, cannot be said to be grossly inadequate or insufficient so as to warrant interference in appeal.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

Mohan/